

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK
-----x

17-CR-544 (NGG)

3 UNITED STATES OF AMERICA,

United States Courthouse
4 Plaintiff, Brooklyn, New York

5 -against-

May 15, 2019
6 MICHAEL LESLIE COHEN,
4:30 p.m.

7 Defendant.
-----x

8 TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
9 BEFORE THE HONORABLE NICHOLAS G. GARAUFIS
10 UNITED STATES SENIOR DISTRICT JUDGE

APPEARANCES

11 For the Government: UNITED STATES ATTORNEY'S OFFICE
12 Eastern District of New York
13 271 Cadman Plaza East
14 Brooklyn, New York 11201
15 BY: JAMES McDONALD
16 DAVID PITLUCK
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Assistant United States Attorneys

18 UNITED STATES DEPARTMENT OF JUSTICE
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22 For the Defendant: MORRISON & FOERSTER LLP
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AMANDA AIKMAN, ESQ.
- and -

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1 (In open court.)

2 THE COURTROOM DEPUTY: Criminal cause for a plea.

3 Counsel, please state your appearances.

4 MR. McDONALD: Good afternoon, Your Honor.

5 James McDonald, Jonathan Lax, Christopher Cestaro,
6 and David Pitluck on behalf of the United States.

7 THE COURT: Come on up.

8 You may be seated in the back.

9 MR. WHITE: Good afternoon, Your Honor.

10 For Mr. Cohen, Ronald White from Morrison &
11 Foerster, and Amanda Aikman, also from Morrison & Foerster.

12 MR. SCHOEMAN: Paul Schoeman from Kramer Levin, also
13 for Mr. Cohen.

14 THE COURT: All right.

15 And, Mr. Cohen, good afternoon, sir.

16 THE DEFENDANT: Good afternoon.

17 THE COURT: Okay, we have a few things that we need
18 to do.

19 First of all, the issue of the representation of the
20 defendant by Mr. White. I think the government would like us
21 to inquire.

22 MR. McDONALD: That's correct, Your Honor.

23 THE COURT: In the nature of a *Curcio* inquiry.

24 MR. McDONALD: We prepared a suggested colloquy.

25 THE COURT: Oh, yes, thank you. I appreciate that.

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1 MR. McDONALD: It explains the nature of the
2 potential conflicts, as well as the questions that we think
3 would be appropriate in the circumstances.

4 THE COURT: And I understand that Mr. Schoeman, who
5 is co-counsel for the defendant, can serve in the capacity of
6 *Curcio* counsel.

7 MR. SCHOEMAN: That's correct, Your Honor.

8 THE COURT: All right. Okay, so why don't we
9 just -- why don't I just swear in the defendant, because I am
10 going to ask him some questions in connection with the *Curcio*
11 matter.

12 THE COURTROOM DEPUTY: Please raise your right hand
13 please.

14 (Whereupon, the defendant was sworn/affirmed.)

15 THE DEFENDANT: I do.

16 THE COURTROOM DEPUTY: Thank you.

17 THE COURT: Okay.

18 Mr. Cohen, I'm advised that your attorney, Ronald
19 White, who has previously represented you during the course of
20 this investigation and was present for and witnessed certain
21 events that may be relevant to your prosecution.

22 I'm also advised that Mr. White made certain
23 statements to the government that may be relevant to your
24 prosecution.

25 These each and together could lead to a conflict of

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1 interest. For example, if a witness to one of these events
2 testifies, but you or Mr. White have a different memory of
3 events, Mr. White would not be able to testify or to use his
4 independent memory of the relevant conversations, and you may
5 have to choose between foregoing representation of your
6 version of the facts or testify and subject yourself to
7 cross-examination at trial.

8 Moreover, the government has said that you made
9 certain statements that were false and other statements
10 concerning your culpability for certain crimes for which you
11 are charged.

12 If you intend to argue at trial that you made these
13 statements or acted at your attorney's behest, you may have a
14 harder time pressing that defense if you are still represented
15 by the same attorney on whose advice you are claiming that you
16 were relying at that time.

17 The government has also said that Mr. White made
18 certain statements to the government concerning your
19 culpability for some of the crimes with which you are charged
20 and that you authorized him to make those statements.

21 If you intend to argue that Mr. White did not make
22 such statements, said something different to the government
23 than what the government says was not authorized by you to
24 make those statements, or you wish to pursue a defense where
25 Mr. White's statement are put at issue, you, again, may have

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1 more a difficult time pressing that defense, or be unable to
2 call Mr. White as your own witness, if you are still
3 represented by him.

4 Furthermore, it is unlikely that Mr. White will want
5 to pursue a trial strategy that relies on the assertion that
6 he gave you advice or made statements that are being put in
7 question, and it may open him up to scrutiny or make him a
8 witness. This could, for example, lead him to advise you to
9 take certain steps, including to plead guilty for a crime,
10 rather than present certain arguments which would involve his
11 representation, or make it possible that he would be called as
12 a witness at trial.

13 There may be other issues in addition to the ones
14 I've just described that can arise in which your attorney's
15 ability to do certain things may be affected by the fact that
16 he was present for certain events at issue in the case and
17 made statements which may be at issue in the case. No one can
18 foresee every possible conflict of interest.

19 So let's start off with a few questions.

20 Do you have any questions about what I have just
21 explained to you?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: Okay. Now, how have you consulted with
24 Mr. White about these issues?

25 THE DEFENDANT: Yes, I have, Your Honor.

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1 THE COURT: Have you consulted with Mr. Schoeman
2 about the issues, independently of Mr. White?

3 THE DEFENDANT: Yes, I have, Your Honor.

4 THE COURT: Let me just say this: You have the
5 right to be represented by an attorney who does not have any
6 possible conflicts of interest in representing you at all
7 stages of this case, including any plea negotiations. If you
8 proceed with Mr. White, you will be giving up that right.

9 Do you understand that?

10 THE DEFENDANT: I do, Your Honor.

11 THE COURT: You also have the right to consult with
12 an independent attorney who can advise you of the possible
13 conflicts of interest that might arise if you proceed with
14 Mr. White.

15 Do you understand that?

16 THE DEFENDANT: I do, Your Honor.

17 THE COURT: I understand, however, that Mr. Schoeman
18 is advising you about these possible conflicts.

19 Is that correct?

20 THE DEFENDANT: Yes, it is, Your Honor.

21 THE COURT: And you have indicated that you
22 discussed this matter with Mr. Schoeman.

23 THE DEFENDANT: Yes, I have, Your Honor.

24 THE COURT: Has Mr. Schoeman answered all the
25 questions that you had about this potential conflict?

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1 THE DEFENDANT: Yes, he has, Your Honor.

2 THE COURT: Are you satisfied that he's answered all
3 your questions sufficiently?

4 THE DEFENDANT: Yes, I am, Your Honor.

5 THE COURT: Do you understand what he said to you?

6 THE DEFENDANT: Yes.

7 THE COURT: All right. So tell me in your own words
8 what you understand the potential conflicts of interest to be.

9 THE DEFENDANT: That if I keep Mr. White as my
10 counsel, that I will not be able to call him as a witness
11 during trial, so I'm giving up that right.

12 Given that he's a potential witness, he might give
13 me advice which is bias.

14 And lastly, if I was to advance the theory that he
15 was not authorized to correct my misstatements, which he did
16 shortly after my interview in May of 2013, that I could not
17 progress that strategy, but that is not a defense strategy
18 which I'm going to pursue.

19 THE COURT: Okay. Well, you're not under any
20 pressure to make a decision about this right now, because
21 there is no actual conflict that you could identify, but you
22 are entitled, if you wish, after a reasonable period of time,
23 to think about these matters or to consult further with your
24 lawyer or with another lawyer before you advise the Court
25 about what you wish to do.

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1 Do you believe that you have had sufficient time to
2 discuss this matter with Mr. Schoeman and to make a decision
3 about how you wish to proceed?

4 THE DEFENDANT: I have, Your Honor.

5 THE COURT: And do you want to continue with
6 Mr. White representing you?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: Does the government have any other
9 questions it wishes to have me put to the defendant?

10 MR. McDONALD: We do not, Your Honor. Thank you.

11 THE COURT: Okay. All right. Fine.

12 So we will proceed with Mr. Schoeman and Mr. White
13 representing you for purposes of the next step in the process.

14 Agreed?

15 THE DEFENDANT: Agreed.

16 THE COURT: Okay.

17 Mr. White, I understand that your client wishes to
18 plead guilty today to Count Ten of the indictment in
19 17-CR-544, pursuant to an agreement; is that right?

20 MR. WHITE: That's correct, Your Honor.

21 THE COURT: Okay.

22 Mr. Cohen, your attorney advises me that you wish to
23 plead guilty to Count Eleven -- I'm sorry, Count Ten of the
24 indictment in which you are charged.

25 This is a serious decision and I must be certain

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1 that you make it with a full understanding of your rights and
2 the consequences of your plea. I'm going to explain certain
3 rights that you have and then ask you questions. You've
4 already been placed under oath, I simply remind you of that.

5 You understand that having been sworn to tell the
6 truth, you must do so. If you were to deliberately lie in
7 response to any question I ask you, you could face further
8 criminal charges for perjury.

9 Do you understand that?

10 THE DEFENDANT: I do.

11 THE COURT: If I say anything that you do not
12 understand, or if you need me to repeat anything, just ask.
13 It's important you understanding everything that goes on in
14 these proceedings.

15 Is that clear?

16 THE DEFENDANT: That's clear, Your Honor.

17 THE COURT: All right.

18 How old are you, sir?

19 THE DEFENDANT: I'm 47.

20 THE COURT: How far did you go in school?

21 THE DEFENDANT: I have a BA degree from college.

22 THE COURT: Where?

23 THE DEFENDANT: Bowdoin College.

24 THE COURT: And of what country are you citizen?

25 THE DEFENDANT: Both the United States and the

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1 United Kingdom.

2 THE COURT: Okay.

3 And is English your primary language?

4 THE WITNESS: It is.

5 THE COURT: Mr. White, have you had any difficulty
6 communicating with your client in English?

7 MR. WHITE: No, Your Honor.

8 THE COURT: Mr. Cohen, I must be certain that
9 whatever decision you make today you make with a clear head,
10 so I'm going to ask you some questions about your health.

11 THE DEFENDANT: Sure.

12 THE COURT: Are you currently or have you recently
13 been under the care of a doctor or psychiatrist for any
14 reason?

15 THE DEFENDANT: No, I haven't.

16 THE COURT: In the past 24 hours, have you taken any
17 pills, or drugs, or medicine of any kind?

18 THE DEFENDANT: I took an over-the-counter sleeping
19 pill last night.

20 THE COURT: Are you rested this morning?

21 THE DEFENDANT: I have jet lag, Your Honor.

22 THE COURT: Oh, jet lag, well.

23 There are day flights.

24 THE DEFENDANT: I woke up at 3:00 this morning
25 because I thought it was 8:00 this morning.

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1 THE COURT: I see.

2 In the past 24 hours, have you drunk any alcoholic
3 beverages?

4 THE DEFENDANT: Yes, I had a glass of wine on the
5 plane ride here yesterday.

6 THE COURT: Okay.

7 Have you ever been hospitalized or treated for any
8 drug-related problem?

9 THE DEFENDANT: No, I haven't, Your Honor.

10 THE COURT: Is your mind clear as you stand here
11 today?

12 THE DEFENDANT: Yes, it is, Your Honor.

13 THE COURT: Do you understand everything being said
14 to you?

15 THE DEFENDANT: Yes, I do, Your Honor.

16 THE COURT: Mr. White, have you discussed the
17 question of a guilty plea with your client?

18 MR. WHITE: Yes, I have, Your Honor.

19 THE COURT: And in your view, does he understand the
20 rights he will be waiving by pleading guilty?

21 MR. WHITE: Yes, he does, Your Honor.

22 THE COURT: Do you have any question as to your
23 client's competence to proceed today?

24 MR. WHITE: No, I do not.

25 THE COURT: Okay.

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1 Mr. Schoeman, do you have any question about your
2 client's competence?

3 MR. SCHOEMAN: Not at all.

4 THE COURT: Okay. All right.

5 Mr. Cohen, you have a right to be represented by
6 counsel at trial and at every other stage of the proceedings
7 in this case.

8 Do you understand that?

9 THE DEFENDANT: I do, Your Honor.

10 THE COURT: If at any time in the future it becomes
11 necessary to do so, the Court will appoint counsel for you.

12 Do you understand that?

13 THE DEFENDANT: I do.

14 THE COURT: All right.

15 Mr. Cohen, are you satisfied with the assistance
16 your attorneys have given you thus far in this matter?

17 THE DEFENDANT: I am.

18 THE COURT: Do you feel you need more time to
19 discuss with them the question of a guilty plea?

20 THE DEFENDANT: No, I do not.

21 THE COURT: Okay. Now, you are agreeing to plead
22 guilty to Count Ten of the indictment against you, which
23 charges you with material false statements.

24 Do you understand that?

25 THE DEFENDANT: Yes, I do, Your Honor.

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1 THE COURT: And I'm simply going to read
2 paragraph 51 of the indictment and then ask the government to
3 set forth the elements of the crime that the government would
4 have to prove in order to find you guilty of this charge, if
5 you decided to go to trial on it.

6 THE DEFENDANT: Understood.

7 THE COURT: Count Ten charges you with, as follows:
8 Quote, on or about May 30th, 2013, within the Eastern District
9 of New York, the defendant, Michael Leslie Cohen, in a matter
10 within the jurisdiction of the Executive Branch of the
11 government of the United States, to wit: the Federal Bureau of
12 Investigation, did knowingly and willfully make one or more
13 materially false, fictitious, and fraudulent statements and
14 representations to wit:

15 A, that the backdated letter was not backdated when,
16 in fact, as Coehn then and there well knew and believed the
17 backdated letter was backdated;

18 And B, that Cohen had received the backdated letter
19 from CC-1 in 2010 when, in fact, as Cohen then and there well
20 knew and believed he had received the backdated letter from
21 CC-1 in or about March of 2012, end quote.

22 And so I'm going to -- do you understand the charge
23 in Count Ten?

24 THE DEFENDANT: I do, Your Honor.

25 THE COURT: All right. I'm going to ask the

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1 government to set forth the elements of the crime that the
2 government would have to prove to a jury beyond a reasonable
3 doubt and unanimously in order to find the defendant guilty of
4 Count Ten, if the defendant decided to go to trial.

5 MR. McDONALD: Yes, Your Honor.

6 There's five elements the government would have to
7 prove beyond a reasonable doubt.

8 First, that on or about the date specified in the
9 indictment, the defendant made a statement or representation.

10 Second, that this statement or representation was
11 material.

12 Third, that the statement or representation was
13 false, fictitious, or fraudulent.

14 Fourth, that the false, fictitious, or fraudulent
15 statement was made knowingly and willfully.

16 And, fifth, that the statement or representation was
17 made in the matter within the jurisdiction of the government
18 of the United States.

19 THE COURT: So, Mr. Cohen, do you understand the
20 elements of the crime that the government would be required to
21 prove to a jury beyond a reasonable doubt and unanimously if
22 you decided to go to trial in order to convict you of this
23 crime?

24 THE DEFENDANT: I do.

25 THE COURT: All right. You have certain rights.

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1 I'm going to go over those rights with you. Please listen
2 carefully to your rights.

3 You have the right to plead not guilty to this
4 charge. No one can be forced to plead guilty.

5 Do you understand that?

6 THE DEFENDANT: I do.

7 THE COURT: If you plead not guilty to this charge,
8 or persist in a plea of not guilty, you have a right under the
9 constitution and laws of the United States to a speedy and
10 public trial before a jury with the assistance of your
11 attorneys.

12 Do you understand that?

13 THE DEFENDANT: I do, Your Honor.

14 THE COURT: At any trial, you would be presumed to
15 be innocent. You would not have to prove that you were
16 innocent. This is because under our system of law, it is the
17 government that must come forward with proof that establishes
18 beyond a reasonable doubt that you are guilty of the crime
19 charged. If the government failed to meet this burden of
20 proof, the jury would have the duty to find you not guilty.

21 Do you understand that?

22 THE DEFENDANT: I do, Your Honor.

23 THE COURT: In the course of the trial, witnesses
24 for the government would have to come to court and testify in
25 your presence. Your attorneys would have the right to

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1 cross-examine these witnesses. They could raise legal
2 objections to evidence the government sought to offer against
3 you. They could offer evidence on your behalf and compel
4 witnesses to come to court and testify, if you or your
5 attorneys thought there was evidence that might help you in
6 this case.

7 Do you understand that?

8 THE DEFENDANT: I do, Your Honor.

9 THE COURT: At a trial, you would have the right to
10 testify in your own behalf, if you wished to do so. On the
11 other hand, you could not be forced to be a witness at your
12 trial. This is because under the constitution and laws of the
13 United States, no person can be forced to be a witness against
14 themselves.

15 If you wished to go to trial but chose not to
16 testify, I would instruct the jury that they could not hold
17 that against you.

18 Do you understand that?

19 THE DEFENDANT: I understand that.

20 THE COURT: Instead of going to trial you plead
21 guilty to the crime charged, and if I accept your guilty plea,
22 you'll be giving up your right to a trial and all the other
23 rights that I have just discussed. There will be no trial in
24 this case, as far as you are concerned. There will be no
25 appeal on the question of whether you did or did not commit

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1 this crime.

2 The only reason that you could appeal would be if
3 you thought I did not properly follow the law in sentencing
4 you; otherwise, I will simply enter a judgment of guilty based
5 upon your plea of guilty.

6 Do you understand that?

7 THE DEFENDANT: I understand.

8 THE COURT: If you do plead guilty, I'll have to ask
9 you certain questions about what you did in order to satisfy
10 myself that you are guilty of the charge. You'll have to
11 answer my questions and acknowledge your guilt. If you do
12 this, you will giving up your right not to incriminate
13 yourself.

14 Do you understand that?

15 THE DEFENDANT: I understand, Your Honor.

16 THE COURT: Mr. Cohen, are you willing to give up
17 your right to a trial and all the other rights that I have
18 just discussed with you?

19 THE DEFENDANT: I am.

20 THE COURT: I'm going to hand you an agreement in
21 17-CR-544, United States of America against Michael L. Cohen.
22 It consists of six pages.

23 Mr. Cohen, have you read this document?

24 THE DEFENDANT: I have.

25 THE COURT: Have you discussed it with your

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1 attorneys?

2 THE DEFENDANT: I have.

3 THE COURT: Have they answered any and all questions
4 that you had about the document?

5 THE DEFENDANT: Yes, they have.

6 THE COURT: And you understand your rights and
7 obligations under this agreement?

8 THE DEFENDANT: I do, Your Honor.

9 THE COURT: Okay. Let's turn to page 6.

10 On page 6, is that your signature --

11 THE DEFENDANT: It is.

12 THE COURT: -- under your name?

13 THE DEFENDANT: It is, Your Honor.

14 THE COURT: Did you sign the agreement today?

15 THE DEFENDANT: I did, Your Honor.

16 THE COURT: And counsel also signed the agreement?

17 MR. WHITE: I did, Your Honor.

18 THE COURT: And the government has executed the
19 agreement as well?

20 MR. McDONALD: We did, Your Honor.

21 THE COURT: All right, please return the agreement
22 to me.

23 I have an important question for you now, sir.

24 Is there any other promise that has been made to get
25 you to plead guilty that is not contained in this agreement?

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1 THE DEFENDANT: There is not, Your Honor.

2 THE COURT: I'm going over the terms of the
3 statutory penalties associated with pleading guilty to this
4 crime as set forth in paragraph 1 of the agreement.

5 There is no minimum term of imprisonment, and the
6 maximum term of imprisonment is five years.

7 The maximum supervised release term is three years.
8 That would follow any term of imprisonment.

9 If you violated a condition of your supervision, you
10 could be sentenced up to two years in jail without credit for
11 the time you previously served in jail, or the time you
12 previously served on supervised release.

13 There's a maximum fine of \$250,000. Restitution is
14 not applicable. And there's a \$100 special assessment, which
15 is mandatory.

16 So do you understand the statutory penalties
17 associated with pleading guilty?

18 THE DEFENDANT: I do, Your Honor.

19 THE COURT: Now, Mr. White, have you and
20 Mr. Schoeman gone over the sentencing procedures in connection
21 with this crime?

22 MR. WHITE: Yes, we've discussed them extensively
23 with Mr. Cohen.

24 THE COURT: And in your view, does he understand how
25 sentencing would work in his case?

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1 MR. WHITE: In my opinion, yes, he does, Your Honor.

2 THE COURT: Mr. Cohen, have your attorneys discussed
3 sentencing with you?

4 THE DEFENDANT: Yes, they have, Your Honor.

5 THE COURT: They answered all your questions?

6 THE DEFENDANT: They have, Your Honor.

7 THE COURT: And do you feel you have a basic
8 understanding of how sentencing will work in your case?

9 THE DEFENDANT: I do.

10 THE COURT: I'm going to discuss sentencing with you
11 as well.

12 In sentencing you, sir, I'm required to take into
13 consideration a number of things about you and about the crime
14 to which you are pleading guilty. When I do that, I will be
15 directed to a guideline that will provide a sentencing range.

16 I'm not required to sentence you within the range
17 provided by the guideline, but I am required to carefully
18 consider the guideline recommendation, among other things, in
19 deciding what would constitute a reasonable sentence in your
20 case. It is my experience a sentence within the guideline
21 range is often reasonable and appropriate, but that is not
22 always the case.

23 In determining an appropriate sentence for your
24 case, I will consider possible departures from that range
25 under the sentencing guidelines, as well as other statutory

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1 sentencing factors. I may ultimately decide to impose a
2 sentence that is more lenient or more severe than the one
3 recommended by the guidelines.

4 If I do so, I will explain the reasons for the
5 sentence that I have selected.

6 Do you understand that?

7 THE DEFENDANT: I understand.

8 THE COURT: It is important to understand no one
9 knows today what your exact guideline range will be. Any
10 calculations contained in your plea agreement are estimates
11 and I am not bound by them.

12 Do you understand that?

13 THE DEFENDANT: I understand.

14 THE COURT: Before I impose sentence, I will receive
15 a report prepared by the Probation Department which will
16 calculate a particular guideline range. You and your
17 attorneys will have the opportunity to see that report. If
18 you think it's mistaken or incomplete in any way, you'll have
19 the opportunity to bring that to my attention.

20 You must understand that no one can make any promise
21 to you as to the sentence I will impose. Your attorneys or
22 the prosecutors may have made predictions to you, and they
23 make recommendations to the Court concerning the sentence I
24 should impose, and I will listen carefully to whatever they
25 say. But you must clearly understand that the final

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1 responsibility for sentencing you is mine alone.

2 While I may view this case identically to the
3 attorneys, I may also view the case differently. If so, I may
4 not impose the sentence that they have predicted or
5 recommended. Even if I sentence you differently from what the
6 attorneys or anyone else has estimated or predicted, you would
7 still be bound by your guilty plea, and you will not be
8 allowed to withdraw that.

9 Do you understand that?

10 THE DEFENDANT: I understand.

11 THE COURT: Now, I note that the government has made
12 an estimate of the guideline calculation in the plea agreement
13 at paragraph 2.

14 Assuming that you plead guilty today, and you have
15 no prior felony convictions, you will have an adjusted offense
16 level of 12, which puts you -- and your guideline sentence is
17 10 to 16 months in the custody of the Attorney General.

18 Is that within the government's current prediction?

19 MR. McDONALD: That's the government's estimate,
20 Your Honor.

21 THE COURT: Do you understand that that's the
22 government's current estimate?

23 THE DEFENDANT: I do, Your Honor.

24 THE COURT: Now, in this plea agreement letter
25 that's dated today, May 15th, 2019, that you have just told me

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1 that you have discussed with your attorneys and which you
2 signed today, there is an agreement regarding your right to
3 appeal your sentence.

4 The agreement letter says, and I want to make sure
5 that you understand this, Mr. Cohen, that by signing this
6 agreement, you agree not to appeal, or in any other way
7 challenge the sentence I impose upon you if it is 16 months or
8 less. If I were to sentence you to more than 16 months, and
9 you believe there is a legal or other error in my doing that,
10 you would then have the right to appeal your sentence to the
11 U.S. Court of Appeals for the Second Circuit.

12 Do you understand that?

13 THE DEFENDANT: I understand that, Your Honor.

14 THE COURT: Do you understand that you have the
15 right to appeal only if I sentence you to more than 16 months?

16 THE DEFENDANT: I do.

17 THE COURT: Do you understand that even if the
18 sentence I give is you more severe than what you may be
19 thinking or hoping you will receive, you are still going to be
20 bound by your guilty plea and not permitted to withdraw it.
21 You will not be able to challenge or appeal that sentence as
22 long as it is 16 months or less, as we have discussed?

23 THE DEFENDANT: I understand.

24 THE COURT: Okay. Do you have any questions you
25 would like to ask me about the charge, your rights, or

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1 anything else related to this matter that may not be clear to
2 you?

3 THE DEFENDANT: No. I have no questions, Your
4 Honor.

5 THE COURT: Okay. All right.

6 Mr. White, is there anything you would like me to
7 discuss with your client in further detail before I proceed to
8 formal allocution?

9 MR. WHITE: Nothing further, Your Honor.

10 THE COURT: Do you know of any reason why your
11 client should not enter a plea of guilty to this charge?

12 MR. WHITE: No.

13 THE COURT: Are you aware of any viable legal
14 defense to the charge?

15 MR. WHITE: No, Your Honor.

16 THE COURT: Okay.

17 Mr. Cohen, are you ready to plead at this time?

18 THE DEFENDANT: I am, Your Honor.

19 THE COURT: How do you plead to the charge contained
20 in Count Ten of the indictment charging you with materially
21 false statements; guilty or not guilty?

22 THE DEFENDANT: Guilty.

23 THE COURT: Are you making this plea of guilty
24 voluntarily and of your own free will?

25 THE DEFENDANT: I am.

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1 THE COURT: Has anyone threatened or forced you to
2 plead guilty?

3 THE DEFENDANT: No, they haven't.

4 THE COURT: Other than the agreement with the
5 government, has anybody made you any promise that caused you
6 to plead guilty?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Has anyone made you any promise about
9 the sentence you will receive?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: Okay.

12 At this point I'd like you to state briefly in your
13 own words what you did to commit the crime charged in Count
14 Ten of the indictment.

15 MR. WHITE: Your Honor, with the Court's permission,
16 Mr. Cohen is going to read from a statement that we worked out
17 with the government, because it's a little too long to recite
18 from memory.

19 THE COURT: That's fine.

20 You've reviewed this allocution --

21 THE DEFENDANT: Yes, I have, Your Honor.

22 THE COURT: -- with your attorneys?

23 THE DEFENDANT: Yes, I have.

24 THE COURT: All right. But it's your statement.

25 THE DEFENDANT: Yes, it is, Your Honor.

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1 THE COURT: All right. Go ahead.

2 And do it slowly.

3 THE DEFENDANT: Sure.

4 From 1997 until 2013, I worked at Och-Ziff Capital
5 Management. At the end of my time there, I was an executive
6 managing director and head of European operations.

7 I agreed to a voluntary interview with the
8 Department of Justice attorneys, FBI agent, and SEC attorneys
9 on May 30th, 2013 at the U.S. Attorney's Office in Brooklyn.

10 I knew this interview was part of ongoing
11 investigations into Och-Ziff by the DOJ and SEC.

12 The interview lasted almost all day. At the
13 beginning of the interview, I understood that I was providing
14 information to the DOJ and SEC in connection with their
15 investigation and that providing truthful answers was
16 important to both investigations.

17 At one point during this interview, the government
18 showed me a letter addressed to me dated October 14th, 2010,
19 and asked me questions about it. I stated, in substance, the
20 date on the letter was accurate, that I received it in 2010.

21 The statements were false. In fact, I knew this
22 letter had been written in 2012, not in October 2010, as the
23 date indicated. I also knew that I received the letter in
24 2012, not 2010.

25 In 2012, because of the pending SEC investigation of

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1 Och-Ziff, another person offered to write me the letter in
2 order to memorialize an oral agreement we had in 2010. The
3 other person drafted the letter and put the 2010 date on it,
4 which I knew would create the false impression to the
5 government investigators that the government had been
6 documented in writing at that time. Sorry, that the agreement
7 had been documented in writing at that time.

8 The letter was responsive to subpoenas the SEC
9 served on Och-Ziff and me in 2012. And even though I knew the
10 date on the letter was wrong, I provided a copy of the letter
11 to an Och-Ziff lawyer and produced the letter to the SEC in
12 response to the subpoena to me.

13 Then, when I was shown a copy of the letter in the
14 May 2013 interview with government lawyers, I gave the
15 inaccurate answers.

16 I knew at the time I had made the false statements
17 in the interview that the date on the letter and when I
18 received it were both of interest to the government's
19 investigation, and I made them with the intent to mislead the
20 government agencies who were present about those facts.

21 After the interview, I asked my lawyer to contact
22 the DOJ and SEC lawyers and provide them with the correct
23 information about the letter, which my -- which he did two
24 business days later.

25 THE COURT: And the Federal Bureau of Investigation

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1 was also involved in this?

2 THE DEFENDANT: They were present in the interview.

3 THE COURT: Anything else?

4 MR. McDONALD: No, Your Honor. We believe it's
5 sufficient.

6 THE COURT: All right.

7 And at one point you said "memorialize". You used
8 that word?

9 THE DEFENDANT: Yes.

10 THE COURT: Based on the information you've given to
11 me, I find that you are acting voluntarily, that you fully
12 understand the charge, your rights, and the consequences of
13 your plea; there is, moreover, a factual basis for the plea,
14 and I, therefore, accept your plea of guilty to Count Ten of
15 the indictment.

16 And I'm going to schedule a sentencing for
17 Wednesday, September 22nd, 2019 at 11 a.m.

18 Mr. Cohen, you'll be contacted by a probation
19 officer for a presentence interview.

20 Your attorneys will want to be present for the
21 interview.

22 Please provide them with the information that's
23 needed by probation officer, him or her, for their presentence
24 investigation.

25 You and your attorneys will receive a copy of the

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1 report. Please review it carefully. If there is anything in
2 the report that is in error, or if there is something I should
3 know about you that is not in the report, your attorneys will
4 provide that information in writing to me, to the Probation
5 Department, and to the government.

6 And when you come to Court to be sentenced, I will
7 have read everything that's been provided to me in writing.

8 And so do you have any questions?

9 THE DEFENDANT: I don't, Your Honor.

10 THE COURT: All right.

11 I'm going to hand the plea agreement to the
12 government and request a photostatic copy for the Court's
13 file.

14 Yes?

15 MR. McDONALD: Your Honor, the last thing we just
16 would put on the record that we'd ask the Court to continue
17 the bail conditions that have been set prior to the
18 defendant's plea, and we'd request those conditions carry
19 forward now that the defendant's pled guilty.

20 THE COURT: That's fine.

21 Anything else from the defense?

22 MR. WHITE: No, Your Honor.

23 THE COURT: All right, sir, I'll see you in
24 September.

25 THE DEFENDANT: Thank you.

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1 MR. SCHOEMAN: Thank you, Your Honor, for staying
2 late for us.

3 MR. McDONALD: Thank you.

4

5 (Whereupon, the matter was concluded.)

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10 I certify that the foregoing is a correct transcript from the
11 record of proceedings in the above-entitled matter.

12 s/ Linda D. Danelczyk

May 18, 2019

13 LINDA D. DANELCZYK

14 DATE

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